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Candace Havens
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: July 29, 2014
Land Use Action Date: September 9, 2014
Board of Aldermen Action Date: September 15, 2014
90-Day Expiration Date: October 6, 2014

DATE: July 25, 2014

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development
Alexandra Ananth, Chief Planner for Current Planning
Stephen Pantalone, Senior Planner

SUBJECT: **Petition #318-13(3)**, RODNEY D. FARNSWORTH III for a SPECIAL PERMIT/SITE PLAN APPROVAL to create an accessory apartment in part of a finished living space in the basement, at **161 Edinboro Street**, Ward 2, Newtonville, on land known as SBL 21, 23, 18, containing approx. 17,496 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-9(h)(2), of the City of Newton Rev Zoning Ord, 2012.

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Public Hearing.



161 Edinboro Street

EXECUTIVE SUMMARY

The property at 161 Edinboro Street consists of a 17,496 square foot lot in a Multi-Residence 1 zoning district, improved with a two-family, one- to 2½-story dwelling, an attached garage, and a detached garage. The original single-family structure was built circa 1900, and the addition of the second unit, which is attached to the rear of the existing structure by an unenclosed deck, was constructed in approximately 1989. The petitioner had been using the basement of the addition as an illegal accessory apartment prior to receiving a violation notice from the Zoning Enforcement Agent. The petitioner is now seeking a special permit to create an accessory apartment in the basement.

The petitioner provided a site plan showing ten parking spaces on the site, including parking within the attached and detached garages, and in the driveways. Based on city staff's site visit, there appears to be at least five viable parking stalls on the site, which meets the parking requirements under the Newton Zoning Ordinance (NZO) for a two-family dwelling with an accessory apartment. The proposed floor plan for the basement shows two means of egress from the accessory apartment. However, based on conversations with the Zoning Enforcement Agent, the egress through the laundry room/carriage house may not meet the Building Code requirements for egress, and the proposed landings below the window wells may not meet the width requirements. The Zoning Enforcement Agent also noted that the existing deck, which connects the original structure with the addition constructed in 1989, is not enclosed and therefore does not meet the requirement for a common wall connector. Without a common wall connector the structure is not considered a two-family dwelling, and is noncompliant. The Planning Department (Department) recommends that the petitioner provide proposed plans for the enclosure of the deck prior to being scheduled for a future public hearing/working session.

The site is located on a large lot in a neighborhood with other multi-family structures, and has reasonable access to amenities and public transportation. Accessory apartments promote the goals of the 2007 *Newton Comprehensive Plan* ("Plan") to increase the diversity and affordability of the City's housing stock, provided they meet all parking, screening, building code and fire prevention requirements. For these reasons, it appears that the site is an appropriate location for the proposed accessory apartment from a land use perspective. The petitioner should address the noncompliance and Building Code issues noted above.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Board should consider whether:

- The site is an appropriate location for an accessory apartment. (§30-24(d)(1))
- The proposed accessory apartment will not adversely affect the neighborhood. (§30-24(d)(2))

- There will be no nuisance or serious hazard to vehicles or pedestrians. (§30-24(d)(3))
- Access to the site over streets is appropriate for the types and number of vehicles involved. (§30-24(d)(4))

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The site is located on Edinboro Street off of Watertown Street. The land uses in the surrounding neighborhood include single-family and multi-family residences, as well as the Boys and Girls Club, Day middle school and Albermarle Park (**ATTACHMENT B**). The subject property and the surrounding residential properties are mostly zoned Multi Residence 1 (**ATTACHMENT C**).

Edinboro Street has limited maneuverability because the public way is a narrow, two-way traffic, dead-end street. When cars are parked on the street it effectively becomes a one-way street, which would make it difficult for vehicles to access in emergency situations or during periods of snow. The circulation conditions on Edinboro Street are outside of the scope of this special permit, but should be addressed by the City's Division of Public Works.

B. Site

The site consists of approximately 17,496 square feet of land and is improved with several structures, including a two-family dwelling, a detached garage, and an attached garage. The heights of the structures range from one-story to 2½-stories. The two-family structure was built circa 1900, with an addition to the rear of the original structure attached by an unenclosed deck, which was built in approximately 1989. The unenclosed deck does not meet the definition of a common wall connector under the Newton Zoning Ordinance. Therefore, from a zoning perspective the two-family structure is technically two single-family dwellings, which is not allowed in a Multi-Residence 1 district. It appears that the Inspectional Services Department should have recognized that the proposed addition in 1989 would create a noncompliant structure, and should not have issued a building permit.

There is a curb cut on the south side of the lot which accesses surface parking, and a curb cut on the north side of the site, which accesses the attached and detached garages. It is unclear from the site plan and from staff's site visit, whether the garages are currently being use for cars or for other storage. The site is mostly screened with trees and fencing along the side and rear property lines.

The site is currently used as a two-family dwelling, including one unit that is occupied by the owner. The basement of the owner's unit was previously used as an illegal accessory apartment before being noticed by the Zoning Enforcement Agent.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The petitioner is seeking a special permit to allow an accessory apartment use in the basement of the noncompliant two-family dwelling. The site is located in a fairly dense neighborhood with reasonable access to amenities and transportation. Accessory apartments promote the goals of the 2007 *Newton Comprehensive Plan* to increase the diversity and affordability of the City's housing stock. The *Comprehensive Plan* also encourages increasing density on sites that are proximate to village centers and have access to alternative means of transportation. From a land use perspective, this site meets the dimensional requirements for an accessory apartment and accomplishes many of the goals of the *Comprehensive Plan*.

B. Building and Site Design

The petitioner is not proposing any changes to the site, or to the exterior of the structures. Based on conversations with the Zoning Enforcement Agent, the petitioner may need to make improvements to the proposed egresses from the basement, and will need to enclose the existing deck connecting the original residential structure to the 1989 addition so that it has a common wall connector. The petitioner should resubmit plans, including elevations, which show the enclosure of the existing deck prior to being scheduled for a future public hearing/working session. The proposed plans should be shown to the City's Plans Examiner to ensure that the proposed structure will qualify as a two-family dwelling.

The petitioner submitted a survey from 1989 for their site plan. The Department suggested to the petitioner that they re-survey the site even if there have been no changes since that time. This will likely be a requirement by the Inspectional Services Department prior to the issuance of a Certificate of Occupancy or Building Permit. The Department also recommends that as part of the survey, the petitioner calculate the lot coverage and open space percentages.

C. Parking and Circulation

The petitioner wrote in the number and dimension of the parking stalls on the survey from 1989. Since the stalls are not shown on the plan and some of the

garage space may be used for storage, it is difficult to verify whether all of the parking stalls are viable and available. However, based on city staff's site visit there are certainly at least five parking stalls on the site, which meets the requirements for a two-family dwelling and accessory apartment. The Department has no particular concerns regarding parking and circulation. If the petitioner submits a revised and surveyed site plan it should show the location and dimension of the parking stalls.

D. Landscape Screening

The site is screened along the side and rear property lines by vegetation and fencing. The Department has no particular concerns regarding screening.

IV. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum, (**ATTACHMENT A**), provides an analysis of the proposal with regard to zoning. The petitioner is requesting a special permit to create an accessory apartment in a two-family dwelling in the MR1 district.

B. Engineering Review

As the petitioner is not increasing the impervious surfaces on the lot by more than 4% no engineering review is required.

V. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum, the petitioner is seeking the following reliefs:

- Section 30-9(h), to create an accessory apartment in a two-family dwelling in the Multi Residence 1 district.

VI. PETITIONER'S RESPONSIBILITIES

The petitioner should consider the Department's recommendations for the project. Prior to the close of the public hearing or scheduling of a working session, the petitioner should address and/or provide information regarding the following:

- Revised plans illustrating the enclosure of the deck connecting the original structure to the 1989 addition
- Address egress concerns under the Building Code
- Consider surveying the site, which should include proposed parking stalls, and lot coverage and open space percentages

ATTACHMENTS:

Attachment A: Zoning Review Memorandum
Attachment B: Land Use Map
Attachment C: Zoning Map



Setti D. Warren
Mayor

ATTACHMENT A

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City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Candace Havens
Director

ZONING REVIEW MEMORANDUM

Date: July 1, 2014

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Alexandra Ananth, Chief Planner for Current Planning

Cc: Mark J. Lanza, attorney for the applicant
Rodney V. Farnsworth III, applicant
Candace Havens, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to establish an accessory apartment in an existing two-family dwelling

Applicant: Rodney Farnsworth	
Site: 159-161 Edinboro Street	SBL: 21023 0018
Zoning: MR1	Lot Area: 17,496 square feet
Current use: Two-family dwelling	Proposed use: Two-family with accessory apartment

BACKGROUND:

The property at 159-161 Edinboro Street, located in the MR1 district, is improved with a structure built circa 1900 as a single family dwelling, which was later converted to a two-family dwelling in 1989 by building permit. There is a detached garage structure on site, as well as an attached garage which was added in 1989 as well. A building permit was issued in 1990 to finish the basement to include two baths and five bedrooms. The applicant appears to have created a third unit in the basement with three bedrooms, two baths, a living room and a kitchen. Newton Inspectional Services issued a notice of violation in September 2013 for an illegal accessory apartment. The applicant appealed the enforcement to the Zoning Board of Appeals, who upheld the ISD enforcement. The issue was taken to Land Court, where the judge required the Applicant to file for a special permit for the apartment. The Applicant seeks to legalize the existing basement apartment through a special permit, convert it into a one-bedroom unit, and to give two of the bedroom spaces back to the main dwelling.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared by Mark J. Lanza, attorney, dated 5/23/2014
- Parking Plan, prepared by Ronald F. Jarek, architect, dated 9/16/2013

- Existing Accessory Apartment Plan, prepared by Ronald F. Jarek, architect, dated 9/16/2013
- Proposed Accessory Apartment Plan, prepared by Ronald F. Jarek, architect, dated 9/16/2013

ADMINISTRATIVE DETERMINATIONS:

1. The existing two-family structure is located in an MR1 district. Per Section 30-9(h), a special permit is required to create an accessory apartment in the MR1 district.
2. Table 30-8 requires a lot have at least 8,000 square feet for an accessory apartment. The applicant's lot has 17,496 square feet.
3. Table 30-8 requires that a building housing an accessory apartment have at least 2,600 square feet. The applicant has 2,686 square feet on the main floors, and an additional 2,198 square feet in the basement.
4. Section 30-9(h)(1)(a) requires that when there is an accessory apartment within a two family dwelling, one of the units must be occupied by the owner of the property. The owner of the property intends to maintain residency in the main dwelling.
5. Section 30-9(h)(1)(b) requires a two-family dwelling to have been constructed at least ten years prior to the date of application for the permit for the accessory apartment. The dwelling was built circa 1900 and thus meets the requirement.
6. The proposed accessory unit must be greater than the minimum of 250 square feet, and less than the maximum of 1,200 square feet required by the ordinance per Section 30-9(h)(1)(c). The proposed apartment is approximately 1,064 square feet.
7. Any exterior alterations required to meet applicable building, fire or health codes are permitted, per section 30-9(h)(1)(d).
8. There are no other existing or proposed accessory apartments on the lot, per section 30-9(h)(1)(f).
9. No lodgers are allowed in any unit, per section 30-9(h)(1)(g).
10. Sections 30-9(h), 30-19(d)(19) and 30-19(g) require two parking stalls for each dwelling unit, and one stall for the accessory unit. The applicant has an attached two-car garage, as well as a detached two-car garage. There are also six surface parking spaces, for a total of ten available parking stalls on site, exceeding the five required by the Ordinance.
11. The accessory apartment must comply with all applicable building, fire and health codes, per section 30-9(h)(1)(i).

MR1 Zone	Required/Allowed	Existing	Proposed
Lot Size	7,000 square feet	17,496 square feet	No change
Frontage	70 feet	110 feet	No change
Lot size required for an accessory apartment	8,000 square feet	17,496 square feet	No change
Building size required for an accessory apartment	2,600 square feet	2,686 square feet (not including basement)	No change

1. See "Zoning Relief Summary" below:

Zoning Relief Required		
Ordinance		Action Required
§30-9(h)	Creation of an accessory apartment in a two-family dwelling in the MR1 district	S.P. per §30-24

Land Use Map 161 Edinboro Street

*City of Newton,
Massachusetts*

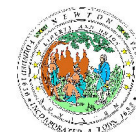
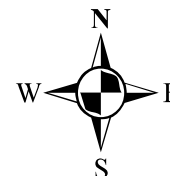
Legend

- Streets - Pavement Edge
- Building Outlines

Land Use

- Single Family Residential
- Multi-Family Residential
- Open Space
- Vacant Land

ATTACHMENT B



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield

0 12.5 25 50 75 100 125 Feet

Map Date: July 16, 2014

Zoning Map

161 Edinboro Street

*City of Newton,
Massachusetts*

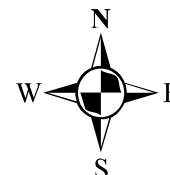
Legend

- Streets - Pavement Edge
- Building Outlines

Zoning

- Single Residence 1
- Single Residence 3
- Multi-Residence 1
- Public Use

ATTACHMENT C



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CITY OF NEWTON, MASSACHUSETTS
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GIS Administrator - Douglas Greenfield

0 12.5 25 50 75 100 125 Feet

Map Date: July 23, 2014